

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

UNITED STATES OF AMERICA

v.

JIMMY JEROME SMITH

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**No. 3:08-CR-111
(Phillips)**

MEMORANDUM AND ORDER

On November 4, 2010, the Honorable H. Bruce Guyton, United States Magistrate Judge, filed a 28-page Report and Recommendation (R&R) [Doc. 118] in which he recommended that defendant's motion to dismiss Counts One, Two and Three of the indictment [Doc. 105] be denied.

This matter is presently before the court on defendant's timely objections to the R&R [Doc. 119]. As required by 28 U.S.C. § 636(b)(1), the court has now undertaken a *de novo* review of those portions of the R&R to which defendant objects. For the reasons that follow, the court finds itself in agreement with Judge Guyton's thorough analysis of the legal issues arising from the evidentiary hearing conducted by him on September 7, 2010. Thus, any further comment by the court is unnecessary and would be repetitive. In sum, the court concurs with the magistrate judge's findings that the evidence from the 2005 incident was destroyed accidentally, and that the evidence from the 2008 incident was destroyed pursuant to Knoxville Police Department Policy. In addition, the undersigned

finds that defendant failed to make any showing that the evidence would be determinative of the outcome of his trial as the destroyed evidence was only potentially useful, rather than obviously material and exculpatory. In preparing his defense, the defendant has available the photographs and reports of the destroyed evidence. Accordingly, no constitutional violation occurred and there is no basis to dismiss Counts One, Two or Three of the indictment.

Accordingly, defendant's objections [Doc. 119] are hereby **OVERRULED** in their entirety whereby the R&R [Doc. 118] is **ACCEPTED IN WHOLE**. Accordingly, defendant's motion to dismiss Counts One, Two and Three of the indictment [Doc. 118] is **DENIED IN ITS ENTIRETY**.

ENTER:

s/ Thomas W. Phillips
United States District Judge